

# 2010 Unemployment Insurance (UI) Reform Bills

## EMPLOYER IMPACTS

June 7, 2010

### CONTEXT:

- Failure to act this year will result in borrowing exceeding \$163 million by the end of 2011.
- The total cumulative impacts over the next 10 years from doing nothing meant:
  - \$81 million in interest payments
  - \$172 million in FUTA tax payments by ALL Vermont employers
  - Total borrowing exceeding \$257 million.
- A comprehensive solution needed to include a combination of tax increases and benefit reductions.
- This compromise gets the fund back in the black in 5 years.

### TAXABLE WAGE BASE:

The taxable wage base is the basis used for figuring an employer's UI taxes.

- **Effective January 1, 2011**  
Taxable wage base will increase to \$13,000.
- **Effective January 1, 2012**  
Taxable wage base will increase again to \$16,000.
- **Effective when Trust Fund is solvent (balance greater than zero and loans repaid)**  
Taxable wage base will index upward annually by overall wage growth after the trust fund balance becomes positive, projected to be 2015.
- **Effective upon return to Schedule III and I**  
Taxable wage base will drop by \$2,000 upon return to tax rate schedule III and another \$2,000 at schedule I.

### FINES AND PENALTIES:

There were three different areas of change related to fines and penalties when employer has responded late to a request for information or has failed to report workers performing services that are covered under the unemployment insurance laws. This improper reporting is commonly referred to "misclassification".

- **Effective July 1, 2010**  
**Penalties associated with requests for information** have increased from \$35 to \$100 if employer fails to file timely reports. Examples: requests for separation and/or wage information (following an unemployment claim being filed) and quarterly Wage and Contribution Reports.

Additionally, an employer's account will remain charged for overpaid unemployment benefits if the overpayment resulted from employer's failure to respond to a request for separation.

**Misclassification** of a worker (failure to report when required) will result in an assessment of a fine up to \$5,000 on employers who misclassify employees. (VDOL will be conducting public education.)

## **MISCONDUCT** (Definitions and examples of misconduct provided subsequently.)

- **Effective May 24, 2010**

- **Being fired for misconduct** can now result in a disqualification of up to a 15 week delay, after which the fired employee can still collect UI. Previously 12 was the maximum number of weeks an employee could be disqualified.

Misconduct is currently defined as “willful and culpable neglect of an employer's interest”, which the employer has the burden to demonstrate. It is NOT a single event of showing up late, but rather repeated negative behavior, usually with warning by the employer. There are three levels of appeals should either party disagree with VDOL's findings. A lawyer is not required.

- ❖ **A definition for gross misconduct** has now been added to statute. Examples include but are not limited to: theft; fraud; intoxication; intentional serious damage to property; intentional infliction of personal injury; any conduct that constitutes a felony; or repeated incidents after written warning of either of the following: unprovoked insubordination or public use of profanity.

- **Effective for new claims filed after July 1, 2011**

- ❖ **Being fired for misconduct** will lead to a cap on the maximum number of weeks to be claimed in a benefit year, not to exceed 23 full weeks.

**Being fired for gross misconduct** will prohibit the use of wages earned from firing employer for calculation of claimant's weekly benefit amount

## **DISCLOSURE OF EXPERIENCE RATING:**

- **Effective July 1, 2010**

The seller of a business is required to disclose its experience rating to a potential buyer upon request.

## **REPORT OF NEW HIRE:**

- **Effective July 1, 2010**

**Report of New Hire** must be submitted to Vermont Department of Labor within 10 days of first date of employment. All reports are required to include the first date of employment.

## **Bills involved:**

Act __ (H.647) ...	An Act Relating to Misclassification of Employees to Lower Premiums for Workers' Compensation and Unemployment Compensation ( <i>June 1, 2010</i> )
Act __ (S.290) ...	An Act Related to Restoring Solvency to the Unemployment Trust Fund ( <i>May 24, 2010</i> )
Act __ (H.792) ...	An Act Related to Implementation of Challenges for Change ( <i>June 1, 2010</i> )
Act __ (S.182) ...	An Act Relating to Determining Unemployment Compensation Experience Rating for Successor Business ( <i>May 24, 2010</i> )

## “MISCONDUCT” AS IT RELATES TO DISQUALIFICATION FOR UNEMPLOYMENT BENEFITS

Vermont’s unemployment law recognizes two types of misconduct as disqualifying; simple misconduct and gross misconduct. Discharge for inability to meet performance standards is generally not considered misconduct.

### SIMPLE MISCONDUCT

**Definition:** Simple misconduct is work related conduct that is in substantial disregard of an employer’s interests. Such conduct may be willful or intentional, but it may also be unintentional conduct that results from extreme carelessness, indifference, or lack of effort. Simple performance deficiencies will generally not be considered misconduct. Employers will generally be expected to provide employees notice and an opportunity to improve their conduct, except in extreme cases. The misconduct **MUST** be work related; off-duty conduct is generally not the basis for a finding of misconduct.

**Written warnings are often the best method for advising and documenting the worker’s need to improve conduct.**

**Consequence:** Disqualification from receiving benefits for up to 15 weeks, with a minimum of 6 weeks, from the time the unemployment claim is filed. The employer’s experience rating record is relieved of charges, provided the initial request for information was received in a timely manner.

**Examples:**

- Repeated tardiness or unexcused absences;
- Rudeness to customers or other employees;
- Insubordination;
- Intentional misrepresentation on a job application.

### GROSS MISCONDUCT

**Definition:** Gross misconduct is work related conduct that demonstrates a flagrant and wanton disregard of an employer’s interests. 21 V.S.A §1344 defines gross misconduct as:

“For purposes of this section, “gross misconduct” means conduct directly related to the employee’s work performance that demonstrates a flagrant, wanton, and intentional disregard of the employer’s business interest, and that has direct and significant impact upon the employer’s business interest, including but not limited to theft, fraud, intoxication, intentional serious damage to property, intentional infliction of personal injury, and conduct that constitutes a felony, or repeated incidents after written warnings of either unprovoked insubordination or public use of profanity.”

**Written warnings are often the best method for advising and documenting the worker’s need to improve conduct.**

**Consequence:** Total disqualification from receiving benefits until the claimant once again secures employment and works long enough to earn the equivalent of 6 times their weekly benefit amount. The employer’s experience rating record is relieved of charges, provided the initial request for information was received in a timely manner. Effective July 1, 2012, wages earned from the employer against whom the gross misconduct was committed are excluded from use in computing the weekly benefit amount.

**Examples:**

- Loss or damage of property due to extreme carelessness or indifference;
- Use of company vehicle to run personal errands while on the clock, when the employee is supposed to be conducting company business;
- Creating a hostile workplace environment through repeated insubordination or continued use of profane language;
- Refusing to participate in an employer-mandated safety exercise;
- Failure of an employee in charge of adult sexual offenders to maintain close physical proximity to their charges at all times while they were in certain public places.
- Inappropriate behavior by employee when handling or supervising children;
- Unprovoked outburst when asked to move from a preferred workstation to a different station that the employer needs and inappropriate behavior detrimental to the employer's business;
- Heavy equipment operator ignoring safety protocols, after warnings, when the safety violation leads to an accident or property damage;
- Employee discharged after yelling at supervisor and using the F-word within proximity of children in his charge at the time.

**PERFORMANCE**

Generally speaking, performance deficiencies will not be considered misconduct. An employer may certainly choose to fire an employee for being a slow learner, or for not performing tasks quickly or carefully enough. However, the department will not consider this misconduct unless the employer can demonstrate deliberate indifference, malingering, or complete lack of effort on the employee's part.